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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A. No. 1765 of 2007

Date of decision: 21.9.2007

Sher Singh and others **...Appellants**

Versus

Bishan Singh and others **...Respondents**

CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr. Mahavir Sandhu, Advocate for the appellants.

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RAJESH BINDAL, J.

This is plaintiffs' second appeal against the concurrent findings of fact by both the Courts below whereby suit filed by the appellants/plaintiffs challenging the decree passed in Civil Suit No. 596-CS of 1993 titled Pawan Kumar etc. Vs. Bishan Singh on August 11, 1993 was sought to be challenged by filing the present suit on February 23, 1995. In the earlier suit, the decree was suffered by Bishan Singh in favour of his two grand sons, namely, Pawan Kumar and Sanjay Kumar, who are respondents No.2 and 3 in the present appeal. Both these beneficiaries of the earlier decree are sons of Mehar Singh, who was one of the son of Bishan Singh. The decree was sought to be challenged by the present appellants/plaintiffs on the ground that the property being coparcenary, Bishan Singh did not have any right to transfer the same even by way of consent decree in favour of some of the beneficiaries as present appellants/plaintiffs had right in the property by birth. However, both the Courts below did not find favour with the contention raised by the appellants. The appellants could not lead any evidence to prove on record that the property in question was ancestral and coparcenary in which they

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had some right by birth. All what was proved on record is Jamabandi for the year 1989-90, which could not lead to the conclusion that property was ancestral. The oral evidence led to prove this fact cannot be relied upon to take a view in favour of the appellants. The contention raised by learned counsel for the appellants that consent decree, having the effect of transfer of immoveable property of a value of more than Rs. 100/- having not been registered, was bad. However, even this contention of the appellants is meritless as what has been held by Hon'ble the Supreme Court is that any consent decree creating right for the first time in the property, the value of which is more than Rs. 100/- would require registration and payment of stamp duty etc.

Accordingly, I do not find any merit in the present appeal and the same is dismissed.

September 21, 2007 **(Rajesh Bindal)**
Pka **Judge**